

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
DOCKET NO. 1:21-cv-245-MOC-DCK

LAWRENCE E. GULLUM,)
vs.)
Plaintiff,)
vs.) ORDER
ENDEAVOR INFRASTRUCTURE HOLDINGS,)
LLC, ANTHONY BUFFA, and DANE JAMES,)
Defendants.)

THIS MATTER is before the Court on Plaintiff's pro se Motion for Partial Summary Judgment. (Doc. No. 34). Defendants have replied in opposition. (Doc. No. 37). Having considered the motion and reviewed the pleadings, the Court enters the following Order.

Plaintiff's motion will be denied without prejudice because it is premature. Summary judgment is "not appropriate when the parties have not had an opportunity for reasonable discovery." Zak v. Chelsea Therapeutics Int'l. Ltd., 780 F.3d 597, 606 (4th Cir. 2015); see also E.I. du Pont de Nemours & Co. v. Kolon Indus., Inc., 637 F.3d 435, 448–49 (4th Cir. 2011); Gay v. Wall, 761 F.2d 175, 178 (4th Cir. 1985) ("Because Gay was not afforded an opportunity for reasonable discovery, the district court's treatment of the motion to dismiss as a motion for summary judgment was an abuse of discretion.").

As Defendants note, "no initial attorney conference has been held, no scheduling order has been entered, and no discovery has been conducted in this action." (Doc. No. 37 at 4). The Court thus finds that the parties have not had the opportunity for reasonable discovery that would make

summary judgment appropriate at this point. Zak, 780 F.3d at 606. Plaintiff's motion is therefore premature, no matter how broadly construed.

Because Plaintiff's motion is premature, it will be denied without prejudice. Plaintiff will have an opportunity to renew this Motion for Summary Judgment at an appropriate time, once sufficient discovery has been conducted.

ORDER

IT IS, THEREFORE, ORDERED that Plaintiff's pro se Motion for Partial Summary Judgment, (Doc. No. 34), is **DENIED** without prejudice.

Signed: July 26, 2022


Max O. Cogburn Jr.
United States District Judge